U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 00 021 52548 Office: California Service Center Date: AUG 31 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(iii)

IN BEHALF OF PETITIONER: [redacted]

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a jewelry manufacturer. It seeks classification of the beneficiary as a gemologist sorter trainee for a period of 22 months. The director determined that the petitioner has not demonstrated the proposed training is not available in the beneficiary's own country. The director also determined that the petitioner has not demonstrated that the beneficiary will not be placed in a position which citizens and resident workers are regularly employed. The director decided that the petitioner did not establish that the beneficiary will not engage in productive employment. The director also decided that the petitioner did not establish that the training will benefit the beneficiary in pursuing a career outside the United States.

On appeal, counsel states that the beneficiary satisfies the requirement for H-3 status because she has been invited to take part in a training program that is not available in her home country.

Counsel also requested oral argument. However, oral argument is granted only in cases where cause is shown. It must be shown that a case involves unique facts or issues of law which cannot be adequately addressed in writing. In this case, no cause for oral argument has been shown. Consequently, counsel's request for oral argument is denied.

Section 101(a)(15)(H)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(iii), provides classification to an alien having a residence in a foreign country which he or she has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment.

The regulation at 8 C.F.R. 214.2(h)(7) states, in pertinent part:

> (ii) *Evidence required for petition involving alien trainee*--(A) *Conditions.* The petitioner is required to demonstrate that:
>
> (1) The proposed training is not available in the alien's own country;
>
> (2) The beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed;

(3) The beneficiary will not engage in productive employment unless such employment is incidental and necessary to the training; and

(4) The training will benefit the beneficiary in pursuing a career outside the United States.

(B) *Description of training program.* Each petition for a trainee must include a statement which:

(1) Describes the type of training and supervision to be given, and the structure of the training program;

(2) Sets forth the proportion of time that will be devoted to productive employment;

(3) Shows the number of hours that will be spent, respectively, in classroom instruction and in on-the-job training;

(4) Describes the career abroad for which the training will prepare the alien;

(5) Indicates the reasons why such training cannot be obtained in the alien's country and why it is necessary for the alien to be trained in the United States; and

(6) Indicates the source of any remuneration received by the trainee and any benefit which will accrue to the petitioner for providing the training.

(iii) *Restrictions on training program for alien trainee.* A training program may not be approved which:

(A) Deals in generalities with no fixed schedule, objectives, or means of evaluation;

(B) Is incompatible with the nature of the petitioner's business or enterprise;

(C) Is on behalf of a beneficiary who already possesses substantial training and expertise in the proposed field of training;

(D) Is in a field in which it is unlikely that the knowledge or skill will be used outside the United States;

(E) Will result in productive employment beyond that which is incidental and necessary to the training;

(F) Is designed to recruit and train aliens for the ultimate staffing of domestic operations in the United States;

(G) Does not establish that the petitioner has the physical plant and sufficiently trained manpower to provide the training specified; or

(H) Is designed to extend the total allowable period of practical training previously authorized a nonimmigrant student.

The petitioner's training program requires 22 months for completion. The training includes identification and classification of various gemstones, color grading, gemstone storing and the use of technologically advanced sorting equipment and tools as well as how to detect imitation stones.

The evidence indicates that universities and colleges in the beneficiary's home country were just reopened as of last year after being closed since 1988. Therefore, counsel has shown that the beneficiary is unable to receive proper training in her home country due to the present political conditions. Further, the gem industry is highly advanced in the United States while [redacted] which is rich in gems, is still developing its diamond and precious stones industry.

The beneficiary also has a job offer in [redacted] after the successful completion of her training in the United States. A letter from [redacted] is contained in the record of proceeding. Accordingly, the training will benefit the beneficiary in pursuing a career outside the United States.

The training schedule consists of one month of orientation and office administration where the beneficiary will receive practical training in computer sorting software and inventory systems, three months of formulating and implementing consistent operating and administrative procedures when sorting stones, and 14 months of hands-on experience where the beneficiary will work with a variety of stones learning color, clarity, cut, carat, etc. The trainee's time will be divided into four hours of academic instruction and four hours of supervised training. The beneficiary will be paid a salary of $350 per week. The petitioner has not shown that the beneficiary will not be engaged in productive employment beyond that necessary and incidental to the training. Further, the petitioner had not demonstrated that the beneficiary will not be placed in a position which is in the normal operation of the business and in which citizens and resident workers are regularly employed.

This petition cannot be approved for another reason. The petitioner has developed an in-house training program to provide its trainees with expertise in all areas of its diamond and jewelry manufacturing business. The petitioner's training program deals in generalities with no fixed schedule, objectives, or means of evaluation. The training program does not include the number of hours that will be spent in each course, who will be providing the training and the means by which the instructor(s) will be evaluating the trainee.

Moreover, the petitioner has not established that the physical premises are suitable for such training and that it has enough sufficiently trained manpower to provide the training specified.

In nonimmigrant visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.